

SENATE BILL No. 367

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-1-24.

Synopsis: Local government contracts. Provides that an offeror, a contractor, and certain persons affiliated with an offeror or a contractor for contracts solicited by certain purchasing methods by a political subdivision may not make political contributions to an elected official of the political subdivision during certain periods while the solicitation is pending or after a contract has been awarded.

Effective: July 1, 2016.

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January 11, 2016, read first time and referred to Committee on Local Government.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 367

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-1-24 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]:
4 **Chapter 24. Political Contributions by Offerors and**
5 **Contractors**
6 **Sec. 1. This chapter applies only to:**
7 **(1) an offer submitted to a political subdivision; and**
8 **(2) a contract awarded by a political subdivision;**
9 **after June 30, 2016.**
10 **Sec. 2. As used in this chapter, "affiliated person" refers to any**
11 **of the following:**
12 **(1) A person with any ownership interest or distributive share**
13 **of a business entity of more than five percent (5%).**
14 **(2) An executive employee of a business entity.**
15 **(3) The spouse of an individual described in subdivision (1) or**
16 **(2).**
17 **(4) The minor child of an individual described in subdivision**



(1) or (2).

(5) A subsidiary of a business entity.

(6) A member of the same unitary business group as a business entity.

(7) A subcontractor of a business entity.

(8) An organization recognized by the United States Internal Revenue Service as a tax exempt organization described in Section 501(c) of the Internal Revenue Code that is established by:

(A) a business entity;

(B) a person described in subdivision (1), (2), (3), or (4); or

(C) an entity described in subdivision (5) or (6).

(9) A political action committee for which:

(A) a business entity; or

(B) any Section 501(c) organization described in subdivision (8) related to that business entity;

is a sponsor.

Sec. 3. As used in this chapter, "business entity" refers to any of the following doing business for profit:

(1) A sole proprietorship.

(2) A partnership.

(3) A limited liability partnership.

(4) A limited liability company.

(5) A corporation.

(6) Any other person doing business for profit, regardless of the person's legal organization.

Sec. 4. As used in this chapter, "contract" refers to a contract for:

(1) supplies or services, including professional services, under IC 5-22; or

(2) a public works project under IC 36-1-12.

Sec. 5. As used in this chapter, "contract officer" refers to the:

(1) purchasing agent under IC 5-22; or

(2) officer, board, or employee responsible for awarding a public works contract.

Sec. 6. As used in this chapter, "contractor" refers to a person who has been awarded a contract.

Sec. 7. As used in this chapter, "contribution" has the meaning set forth in IC 3-5-2-15.

Sec. 8. As used in this chapter, "executive employee" refers to any of the following:

(1) The president of a business entity.



(2) The chairman of a business entity.

(3) The chief executive officer of a business entity.

(4) An employee of a business entity:

(A) who has executive decision making authority over the long term and day to day affairs of the business entity; or

(B) whose compensation is determined directly, in whole or in part, by the award of, or payment under, contracts between the political subdivision and the business entity.

Sec. 9. As used in this chapter, "offer" means a response to a solicitation.

Sec. 10. As used in this chapter, "offeror" means a person who submits an offer.

Sec. 11. (a) As used in this chapter, subject to subsection (b), "solicitation" means the procedure by which a political subdivision invites persons to submit an offer to enter into a contract with the political subdivision.

(b) For purposes of this chapter, "solicitation" refers only to the following:

(1) A solicitation for purchase of services under IC 5-22-6.

(2) A request for proposals under IC 5-22-9.

(3) A solicitation for the provision of professional services for a public works project.

(4) A solicitation for the provision of work or services for a public works project under a contract that is awarded by other than competitive bids.

Sec. 12. As used in this chapter, "sponsor" refers to an individual or organization that contributes at least thirty-three percent (33%) of the total funding of a political action committee.

Sec. 13. (a) During the period described in subsection (b):

(1) a contractor; and

(2) an affiliated person of the contractor;

may not make a contribution to an individual who holds an elected office of the political subdivision awarding the contract.

(b) The prohibition on contributions under this section:

(1) begins on the date of the award of the contract; and

(2) ends on the later of the following:

(A) Four (4) years after the date that a contract is awarded.

(B) One (1) year after the date of the expiration or termination of the contract.

Sec. 14. (a) During the period described in subsection (b):

(1) a person who has no contracts but has an offer pending;



1 and

2 (2) affiliated persons of the person described in subdivision
3 (1);

4 may not make a contribution to an individual who holds an elected
5 office of the political subdivision awarding the contract.

6 (b) The prohibition on contributions under this section:

7 (1) begins on the date that the solicitation is issued; and

8 (2) ends on the day after the date the contract is awarded.

9 Sec. 15. (a) Every:

10 (1) solicitation issued; and

11 (2) contract entered into;

12 by a political subdivision must contain a statement that the
13 contract is voidable under section 17 of this chapter if the offeror
14 or contractor violates section 13 or 14 of this chapter.

15 (b) Before a contract is awarded to an offeror in relation to a
16 solicitation under this chapter, the offeror must submit to the
17 contracting officer a statement given under the penalties for
18 perjury that neither the offeror nor an affiliated person of the
19 offeror has made a contribution in violation of section 14 of this
20 chapter.

21 Sec. 16. A violation of section 13 or 14 of this chapter is cured if,
22 not later than thirty (30) days after the prohibited contribution is
23 made, the offeror or contractor files with the contract officer a
24 statement given under the penalties for perjury containing the
25 following information:

26 (1) A statement that a prohibited contribution was made.

27 (2) The date of the prohibited contribution.

28 (3) The name of the person making the prohibited
29 contribution.

30 (4) The name of the elected official to whom the prohibited
31 contribution was made.

32 (5) A statement that the prohibited contribution has been
33 returned to the person making the contribution.

34 (6) The date that the prohibited contribution was returned.

35 Sec. 17. (a) This section applies to a contract with a person who
36 violates section 13 or 14 of this chapter.

37 (b) The contract officer shall void a contract described in
38 subsection (a) unless the contract officer makes a written
39 determination that voiding the contract would be contrary to the
40 best interests of the political subdivision. The written
41 determination must state the reasons why the contract officer
42 considers voiding the contract would be contrary to the best



1 interests of the political subdivision.

2 **Sec. 18. (a) An offeror that violates section 13 of this chapter**
3 **shall be considered a nonresponsible offeror by the political**
4 **subdivision for a period of three (3) years beginning with the date**
5 **of the award of the contract.**

6 **(b) A contractor that violates section 14 of this chapter shall be**
7 **considered a nonresponsive offeror for a period of three (3) years**
8 **beginning with:**

9 **(1) the date the contract is voided under section 17 of this**
10 **chapter, if the contract is voided; and**

11 **(2) the end of the term of the contract if the contract officer**
12 **makes a written determination under section 17(b) of this**
13 **chapter.**

